

Return:
Joyce Bradley
Admin.

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INSTR # 200315493
OR BK 01133 PGS 0017-0023
RECORDED 04/29/2003 10:00:39 AM
J. M. OXLEY JR
CLERK OF CIRCUIT COURT
NASSAU COUNTY, FLORIDA
RECORDING FEES 33.00

Development Agreement

Between

LIBERTY DEVELOPMENT FLORIDA LLC
And
Nassau County

Fee 33.00

7

THIS AGREEMENT, entered into and made effective this 14th day of April, 2003, by and between **LIBERTY DEVELOPMENT FLORIDA LLC**, a Florida Limited Liability Company, referred to herein as "Developer", and the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a Political Subdivision of the State of Florida, hereafter "County".

RECITALS

WHEREAS, Florida Statutes, Chapter 163, grants the County the authority to enact development agreements; and,

WHEREAS, the parties are in agreement as to the terms of this Agreement; and

WHEREAS, this Agreement is in the best interest of the citizens of Nassau County.

NOW THEREFORE, in consideration of these recitals, the mutual agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

PREAMBLES AND CONDITIONS PRECEDENT

- 1.1 The representations and the representations set forth in the foregoing paragraphs are material to this Agreement and are hereby incorporated into and made part of this agreement as though they were fully set forth in this Paragraph.
- 1.2 The parties agree the County and Developer are separate and distinct individuals or entities and unless expressly provided for herein, none of the parties shall be considered to be the agent of the other, and shall not have any general authority to enter into any contract, assume or impose any obligation or make any warranties on behalf of the other.
- 1.3 The terms of this agreement shall be equally binding on Developer and homeowners association.
- 1.4 The legal description of the property is attached hereto as Exhibit "A" and made a part hereof.

ARTICLE II

PUBLIC PURPOSE

- 2.1 The County has identified a number of public purposes which are achieved through the implementation of the terms and conditions of this agreement which include but are not necessarily limited to the following:
 - 2.1.1 Permits a creative approach to the development of lands:

- 2.1.2 Accomplishes a more desirable environment than would be possible through the Strict application of the minimum requirements of the Comprehensive Land Use Plan and zoning ordinance; and
- 2.1.3 Provides for affordable housing, in furtherance of the County's goals established in the County's Comprehensive Land Use Plan;

ARTICLE III

RESPONSIBILITIES OF THE PARTIES

3.1 The project is located adjacent to County Road 107, and is part of a larger parcel which is designed to provide affordable housing in Nassau County. The Developer agrees that this parcel, described in Exhibit "A", attached hereto, (referred to herein as "Parcel A"), as well as the adjacent parcel, described in Exhibit "B", attached hereto, (referred to herein as "Parcel B"), will be developed in such manner as to provide affordable housing. Affordable housing is herein defined as one or more of the following:

- a. Any single family or multifamily housing project that qualifies receives approval and complies with a program administered by the Florida Housing Finance Corporation. Developer must make a commitment to maintain compliance with the program for a minimum of fifteen (15) years; or
- b. Any single family or multifamily housing project that qualifies receives approval and complies with an Affordable Housing Program administered by the Federal Home Loan Bank System. Developer must make a commitment to maintain compliance with program for a minimum of fifteen (15) years; or
- c. Any housing rental unit with a monthly rent that is equal to or less than the then current rents established by the Florida Housing Finance Corporation for families that earn 60% or less than the Area Median Income.
- d. For owner occupied housing, the criteria shall be based on the density of that type of housing unit within the development and will be as follows:
 - o If the density is 9 units to the acre or higher, the initial sales price of the home will be affordable to families earning 90% or less of the Area Median Income
 - o If the density is between 8 and 8.9 units to the acre, the initial sales price of the home will be affordable to families earning 100% or less of the Area Median Income.
 - o If the density is between 7 and 7.9 units to the acre, the initial sales price of the home will be affordable to families earning 110% or less of the Area Median Income.
 - o If the density is between 6 and 6.9 units to the acre, the initial sales price of the home will be affordable to families earning 110% or less of the Area Median Income.
 - o If the density is between 4 and 4.9 units to the acre, the initial sales price of the home will be affordable to families earning 115% or less of the Area Median Income.
 - o If the density is less than 4 units to the acre, the initial sales price of the home will be affordable to families earning 120% or less of the Area Median Income

For purposes of this criteria, the term "affordable" is defined as: The monthly payments on a mortgage with a loan to sales price ratio of 95% and an amortization period of 360 months do not exceed 28% of the family's gross monthly income; or

- e. Any rental or owner occupied housing unit which meets or exceeds the criteria for affordability for persons or families having very low income, low income or moderate income, as described in the County's Comprehensive Land Use Plan, "Housing Element", as amended from time to time.
- 3.1.1 No building permit shall be issued for construction of any units on Parcel "A", prior to commencement of construction of the units to be constructed on Parcel "B"; PROVIDED, HOWEVER, that Developer may be permitted to construct horizontal/infrastructure improvements on both parcels simultaneously, to provide an economy of scale in the development of all units.
- 3.1.2 Developer shall donate the necessary right-of-way to widen C.R. 107 adjacent to its property, should the County decide to include such road expansion in its five year Capital Improvements Plan (CIP).
- 3.1.3 Developer shall execute such agreement or agreements as may be required by the Nassau County Sheriff's Office for the provision of adequate monitoring and security for the residents of the project and surrounding community. Developer will be required to submit to the Planning Staff annually a report from the Sheriff's office addressing the security of the development.
- 3.1.4 Developer shall pay all applicable transportation impact fees and "fair share" fees as required by the County pursuant to its ordinances.
- 3.1.5 Developer will obtain local and state certifications, annually, that it continues to meet the applicable criteria for affordable housing, as defined herein.
- 3.1.6 Developer will begin development on the property within 30 months after the date of execution of this agreement. In the event that Developer fails to begin development within this time period, the County will have the right to revert the zoning of the Property to its original zoning.
- 3.1.7 In consideration of Developer's Agreement to provide affordable housing for Nassau County in furtherance of the County's goals established in the County's Comprehensive Land Use Plan, County shall issue to Developer a complete concurrency certificate for the development, as required and contemplated by County's Concurrency Management Ordinance.

ARTICLE IV

SUPPLEMENTAL GENERAL CONDITIONS

4.1 No Vested Rights Granted

Excepted as expressly provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Developer. The County does not warrant by this Agreement that Developer is entitled to any other approvals required.

4.2 No Waiver

No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constituted a continuing waiver unless expressly provided for by a written amendment to this Agreement, nor shall a waiver or default under this Agreement be deemed a waiver of any subsequent default of the same type. The County's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by Developer or the acceptance of any required facility, equipment or service.

4.3 Amendment/Modification

This Agreement may be amended or modified only by a written amendment approved and executed by the County and Developer.

4.4 Default

A default is defined herein as either parties' breach of, or failure to comply with the terms of this Agreement.

4.5 Entire Agreement

This written Agreement, and written amendments, and any referenced attachments hereto, shall constitute the entire Agreement between Developer and the County.

4.6 Dispute Resolution

Any dispute arising under this contract, which is not disposed of by agreement, shall be decided by an arbitrator, who shall reduce his/her decision to writing and furnish a copy to both parties. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be submitted to binding arbitration in accordance with arbitration rules as established by the Florida Supreme Court. Mediators shall be chosen from the Supreme Court approved list of arbitrators in the Fourth Judicial Circuit and the cost of arbitration shall be borne by the Developer. The decision of the arbitrator shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, or so grossly erroneous as to necessarily imply bad faith or not supported by substantial evidence.

4.7 Severability

If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

4.8 This agreement is subject to all other state laws and county regulations.

ARTICLE V

5.1 Benefits

The benefits of this Agreement to Developer are personal and shall not be assigned without the express written approval of the County. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of Developer and also shall be binding on the heirs, successors, and assigns of Developer. There is no prohibition on the right of the County to assign its rights under this Agreement. However, no act of the County shall constitute a release of the original Developer from his liability under this Agreement.

5.2 Notice

Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

To County: Clerk of Court
191 Nassau Place
Yulee, Florida 32097

With a copy to: Michael S. Mullin
Nassau County Attorney
191 Nassau Place
Yulee, Florida 32097

To Developer: Liberty Development Florida LLC
Post Office 8434
Fernandina Beach, FL 32035-8434

With a copy to: Poole & Poole, P.A.
Post Office Box 1280
Fernandina Beach, FL 32035-1280

ARTICLE VI

Pursuant to Florida Statutes, Section 163.3227, the following declaration is made:

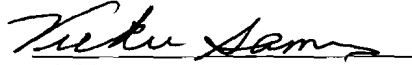
- a. The property described in Exhibit "A", hereto, shall be developed as affordable housing, comprised of single and multi-family dwellings, at a density of ten (10) units per acre.
- b. These will be one, two and three-story dwellings that shall be constructed in accordance with all applicable State and County regulations and building codes.
- c. This Agreement shall terminate ten (10) years from date of execution by both parties.
- d. The property will be accessed via County Road 107.
- e. No lands will be dedicated for public purposes except for right-of-way for C.R. 107 as hereinabove described.
- f. Developer will secure all permits required for development by Nassau County Codes prior to commencement of construction.
- g. The development proposed and permitted herein is consistent with the Comprehensive Plan and land development regulations of Nassau County.
- h. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.


IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year hereinabove set forth.

COUNTY:

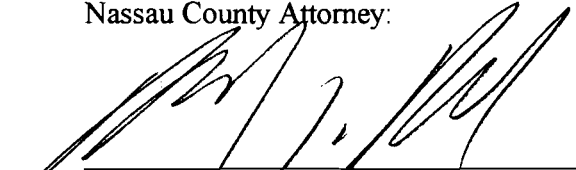
Board of County Commissioners
Nassau County, Florida

Attest:

By: 
Vickie Samus
Its: Chairman

By: 
J. M. "Chip" Oxley, Jr.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:



Michael S. Mullin, Esquire

DEVELOPER:

LIBERTY DEVELOPMENT FLORIDA LLC
a Florida Limited Liability Company

By: FALCON FAMILY HOLDINGS, L.P.

By: 

Todd B. Lanier, Manager/Member

Coastal Land Surveyors

Boundary • Subdivisions • Topographic • Construction

34 North 14th Street
Fernandina Beach, FL 32034
(904) 241-8850 Voice
(904) 277-8850 Fax

LEGAL DESCRIPTION NO. 9904-18L

A PORTION OF SECTIONS 40 AND 41,
TOWNSHIP 2 NORTH, RANGE 28 EAST, NASSAU COUNTY, FLORIDA.
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF SECTION 42, TOWNSHIP 2 NORTH, RANGE 28 EAST, SAID NASSAU COUNTY, FLORIDA; THENCE SOUTH 85 DEGREES 48 MINUTES 04 SECONDS EAST ALONG THE SOUTHERLY LINE OF SAID SECTION 42, A DISTANCE OF 590.27 FEET TO A POINT; THENCE NORTH 04 DEGREES 39 MINUTES 32 SECONDS WEST, A DISTANCE OF 3135.69 FEET TO A POINT; THENCE SOUTH 85 DEGREES 20 MINUTES 28 SECONDS WEST, A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 85 DEGREES 20 MINUTES 28 SECONDS WEST, A DISTANCE OF 777.00 FEET TO A POINT; THENCE NORTH 04 DEGREES 39 MINUTES 32 SECONDS WEST, A DISTANCE OF 585.03 FEET TO A POINT LOCATED ON THE ARC OF A CURVE CONCAVE TO THE NORTHEASTERLY AND HAVING A RADIUS OF 540.00 FEET; THENCE AROUND AND ALONG SAID CURVE AN ARC DISTANCE OF 257.04 FEET (SAID ARC BEING SUBTENDED BY A CHORD BEARING AN DISTANCE OF SOUTH 81 DEGREES 01 MINUTES 21 SECONDS EAST, 254.62 FEET) TO A POINT; THENCE NORTH 85 DEGREES 20 MINUTES 28 SECONDS EAST, A DISTANCE OF 529.56 FEET TO A POINT; THENCE SOUTH 04 DEGREES 39 MINUTES 32 SECONDS EAST, A DISTANCE OF 525.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.48 ACRES, MORE OR LESS, IN AREA.

PREPARED BY:
JIM PRACOCK, P.S.M. NO. 3718



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P. O. Box 1010
Fernandina Beach, Florida 32035-1010

Nick Deonas
Ansley Acree
Vickie Samus
Floyd L. Vanzant
Marianne Marshall

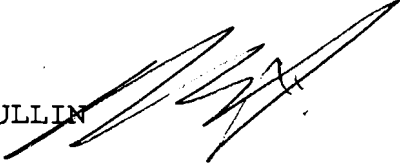
Dist. No. 1 Fernandina Beach
Dist. No. 2 Fernandina Beach
Dist. No. 3 Yulee
Dist. No. 4 Hilliard
Dist. No. 5 Callahan

J. M. "Chip" OXLEY, JR.
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

M E M O R A N D U M

TO: JAY MARLLES

FROM: MICHAEL S. MULLIN 

SUBJECT: LIBERTY DEVELOPMENT FLORIDA, LLC

DATE: May 19, 2003

I am in receipt of your Memo dated May 14, 2003, regarding the above. I concur that the Memo and letter should be attached to the Ordinance.

I will provide a response to Mr. Poole.

/am

cc: Wesley Poole, Esq.



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P. O. Box 1010
Fernandina Beach, Florida 32035-1010

Nick Deonas
Ansley Acree
Vickie Samus
Floyd L. Vanzant
Marianne Marshall

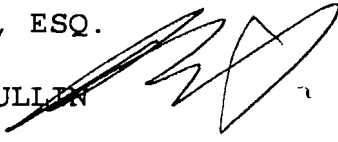
Dist. No. 1 Fernandina Beach
Dist. No. 2 Fernandina Beach
Dist. No. 3 Yulee
Dist. No. 4 Hilliard
Dist. No. 5 Callahan

J. M. "Chip" OXLEY, JR.
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

M E M O R A N D U M

TO: WESLEY POOLE, ESQ.

FROM: MICHAEL S. MULLIN 

SUBJECT: LIBERTY DEVELOPMENT FLORIDA, LLC

DATE: May 19, 2003

This will acknowledge receipt of your letter dated May 6, 2003.

I asked Mr. Marlles to comment, and he agrees with you.

The letter and Memo will be attached to the Ordinance.

If you have any questions, please call.

/am

cc: Jay Marlles



Nassau County Planning & Zoning Department
 213 Nassau Place
 Yulee, Florida 32097

Jay R. Marles, AICP
 Planning Director

RECEIVED
 5/15/03

MEMORANDUM

TO: Mike Mullin, County Attorney
FROM: Jay Marles, Planning Director *JAM*
DATE: May 14, 2003
SUBJECT: Liberty Development Florida, LLC

Mike I have reviewed your memo and the attached letter from Wesley Poole. I had one of the staff reviewed the Federal Home Loan Bank program criteria and we agree with Mr. Poole. He is correct in his statement of the criteria. It is up to you if you want to modify the Development Agreement or not. We could file his letter and the planning staff memo and the planning staff research with the original Ordinance so it clarifies the situation if it ever becomes an issue.

*AS per
 C. P. J. M.
 P. go in your review of the
 Abbeville ordinance, Lib. Dev., Fla.
 LLC. I will discuss C. P. M.
 Poole & E. concerning the
 & C. P. should be attached to the
 100.*



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P. O. Box 1010
Fernandina Beach, Florida 32035-1010

received
5/13/03

Nick Deonas
Ansley Acree
Vickie Samus
Floyd L. Vanzant
Marianne Marshall

Dist. No. 1 Fernandina Beach
Dist. No. 2 Fernandina Beach
Dist. No. 3 Yulee
Dist. No. 4 Hilliard
Dist. No. 5 Callahan

J. M. "Chip" OXLEY, JR.
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

MEMORANDUM

TO: JAY MARLLES, PLANNING DIRECTOR

FROM: MICHAEL S. MULLIN, COUNTY ATTORNEY

*Dictated but not proof read by
Mr. Mullin. - Mailed in his
absence to avoid delay.*

DATE: MAY 9, 2003

RE: LIBERTY DEVELOPMENT FLORIDA LLC

Jay, I received the attached letter from Wesley Poole. I understand his concern. Please review the letter and advise.

I will prepare a letter if you concur.

MSM:jb

CC: Wesley Poole, Esquire

POOLE & POOLE, P.A.
Attorneys at Law
SUITE 200, ALLAN BUILDING
303 CENTRE STREET
FERNANDINA BEACH, FLORIDA 32034

WESLEY R. POOLE
H. PRICE POOLE, JR.
CAROL ANN FREEHAFFER
FRANCES G. BURGESS, C.L.A.

PLEASE REPLY TO:
POST OFFICE BOX 1280
FERNANDINA BEACH, FL 32035-1280
TELEPHONE 904. 261.0742
FACSIMILE 904. 261.0745

May 6, 2003

Michael S. Mullin, Esq.
Nassau County Attorney
Post Office Box 1010
Fernandina Beach, FL 32035-1010

Re: Liberty Development Florida LLC

Dear Mike:

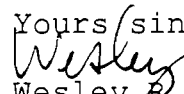
My client has expressed a concern that certain language in the Development Agreement could be subject to misinterpretation. That language is the last sentence in Section 3.1 d., which reads as follows:

"For purposes of this criteria, the term "affordable" is defined as: The monthly payments on a mortgage with a loan to sales price ratio of 95% and an amortization period of 360 months do not exceed 28% of the **family's** gross monthly income; or" (emphasis added)

The concern is that this could be interpreted to mean that the payments will not exceed 28% of a particular family's income. This would, obviously, be difficult, if not impossible, to verify. The intent is to require that the payments not exceed 28% of the maximum allowable percentage of the Area Median Income. This methodology is consistent with the Federal Home Loan Bank affordable housing criteria upon which this part of the agreement is based.

If you agree, I would appreciate your written acknowledgement of this interpretation; with such acknowledgement, I do not think an addendum to the Agreement would be required.

I would appreciate your thoughts.

Yours sincerely,

Wesley R. Poole

wespoole@bellsouth.net

copy: client



Nassau County Planning & Zoning Department
213 Nassau Place
Yulee, Florida 32097

Jay Marles, AICP
Planning Director

MEMORANDUM

TO: Jay Marles, Planning Director

FROM: Jason Cleghorn, Planner II *J*

DATE: 14 May 2003

SUBJECT: Liberty Development Florida LLC/Federal Home Loan Bank Program

As you requested I have researched the language in Section 3.1d of the Liberty Development Florida LLC Development agreement and compared it to the Federal Home Loan Bank affordable housing criteria.

Mr. Poole is correct in his assertion that the term 'family's gross monthly income' is inappropriate. 12 CFR-Chapter IX-Part 951 in Section 951.1 Definitions defines affordable as the rent charged for occupancy by a household with an income at or below eighty (80) percent of the **median income for the area**, does not exceed thirty (30) percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP (Affordable Housing Program) application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom. (emphasis added).

Median income for the area for owner-occupied projects is defined as (i) The median income for the area, as published annually by HUD; (ii) The median income for the area obtained from the Federal Financial Institutions Examination Council; (iii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality; (iv) The median income for the area, as published by the United States Department of Agriculture; or (v) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

All of the programs associated with the Federal Home Loan Bank program use the term Area Median Income (AMI), and generally do not refer to an individual family's income. The programs tend to be broader and measure affordability as a function of a numerical average for a given geographic area.

Enclosures: Federal Home Loan Bank Program documents

FERNANDINA
(904) 491-3606
FAX (904) 491-3611

TOLL FREE
1-800-264-2065
1 800-948-3364

HILLIARD
(904) 845-3610
FAX (904) 845-1230



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CICA Programs for Housing

Community Investment Program (CIP) for Housing

The CIP (which may be offered under different names -- see Guide to Individual Programs for Affordable Housing) is a lending program in which member banks advance (loans) at a discounted rate of interest or obtain AAA-rated letters of credit from FHLBanks. Lenders may use CIP advances to fund the purchase, construction, refinancing or predevelopment financing of:

- **owner-occupied housing** for individual families with incomes that do not exceed the median income (AMI); or for projects in which at least 51% of the units are occupied by families with incomes at or below 115% of AMI;
- **rental housing** in which at least 51% of the units are occupied by or for families with incomes at or below 115% of AMI; or
- **manufactured housing parks** in which at least 51% of the units are affordable to families with incomes at or below 115% of AMI; or which have a median income at or below 115% of AMI.

Lenders may use the proceeds of CIP funding to finance housing directly (to purchase) or indirectly (purchasing eligible mortgage securities, mortgage-backed securities, low-income housing tax credits or lending to other lenders to make eligible loans). FHLBanks discount the interest rates on CIP advances and may require the lender to pass through this discount to its own borrowers.



All PDF's on this site require Acrobat Reader 5.0 or higher. Click above to download it for free.

CICA Programs For Affordable Housing: Introduction

Affordable Housing Program (AHP)

- AHP Competitive Application Program
- AHP Homeownership Set-Aside Program
- AHP Regulation
- AHP Statistics

Community Investment Program for Housing (CIP)

- CICA/CIP Regulation
- CICA/CIP Statistics

Guide To Individual FHLBank CICA Programs for Affordable Housing

Community Investment Officers of the FHLBanks

[About Us](#)
[FHLBank System & Programs](#)
[Monthly Interest Rate Survey](#)
[Regulatory Reporting](#)
[Press, Reading Room & Freedom of Information Act](#)
[Career Opportunities](#)
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CICA Programs for Housing

Affordable Housing Program (AHP)

The AHP subsidizes the cost of housing for very low-income and low- or moderate-income owner-occupied and rental housing. The subsidy may be in the form of a grant subsidy or a below-cost interest rate on an advance (loan) from the FHLBank member lender. AHP subsidies must be used to fund the purchase, construction, rehabilitation or refinancing of:

- **owner-occupied housing** for very low-income and low- or moderate-income households (at or below 80% of area median income (AMI)); or
- **rental housing** in which at least 20% of the units will be occupied by very low-income households (50% of AMI). (AHP funds may also be used to fund additional units targeted to households with incomes up to 80% of AMI.)

Each of the 12 FHLBanks contributes at least 10% of its annual net earnings in 2003, a combined total of \$200 million is available for the AHP. The majority of the subsidy is made available through a competitive application process at each FHLBank. Member lenders submit applications for subsidy on behalf of the eligible housing projects. The rest of the subsidy is made available through a homeownership set-aside process.



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CICA Programs For Affordable Housing: Introduction

Affordable Housing Program (AHP)

AHP Competitive Application Program

AHP Homeownership Set-Aside Program

AHP Regulation

AHP Statistics

Community Investment Program for Housing (CIP)

CICA/CIP Regulation

CICA/CIP Statistics

Guide To Individual FHLBank CICA Programs for Affordable Housing

Community Investment Officers of the FHLBanks

Federal Housing Finance Board • 1777 F Street, NW • Washington, DC 20004

Electronic Code of Federal Regulations
e-CFR
TM

THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED MAY 12, 2003

12 CFR - CHAPTER IX - PART 951

[View Part](#)

§ 951.1 Definitions.

As used in this part:

Affordable means that the rent charged for a unit which is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment, but does not include homeownership set-aside funds.

Family member means any individual related to a person by blood, marriage or adoption.

Habitable means suitable for occupancy, taking into account local health, safety, and building codes.

Homeownership set-aside funds means funds provided to a member by a Bank pursuant to a Bank's homeownership set-aside program.

Low-or moderate-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *low-or moderate-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income of 80 percent or less of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, *low-or moderate-income household* means a household which, upon initial occupancy of a rental unit, has an income at or below 80 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *low- or moderate-income household* means an occupying

household with an income at or below 80 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

(3) *Family-size adjustment.* The income limit for *low-or moderate-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Habitable means suitable for occupancy, taking into account local health, safety and building codes.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area. (1) *Owner-occupied projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all owner-occupied projects may choose for purposes of the AHP:

- (i) The median income for the area, as published annually by HUD;
- (ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;
- (iii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;
- (iv) The median income for the area, as published by the United States Department of Agriculture; or
- (v) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(2) *Rental projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all rental projects may choose for purposes of the AHP:

- (i) The median income for the area, as published annually by HUD; or
- (ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;
- (iii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(3) *Procedure for approval.* Prior to requesting approval by the Board of Directors of a median income standard, a Bank shall amend its AHP implementation plan to permit the use of such standard, conditioned on Board of Directors approval. Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's annual contribution to the Resolution Funding Corporation required under sections 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Owner-occupied project means a project involving the purchase, construction, or rehabilitation of owner-occupied housing, including condominiums and cooperative housing, by or for very low-or low-or moderate-income households.

Owner-occupied unit means a unit in an owner-occupied project. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units shall be considered a single owner-occupied unit.

Program means the Affordable Housing Program.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing, including overnight shelters and transitional housing for homeless households and mutual housing, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

Retention period means:

- (1) 5 years from closing for an AHP-assisted owner-occupied unit; and
- (2) 15 years from the date of project completion for a rental project.

Sponsor means a not-for-profit or for-profit organization or public entity that:

- (1) Has an ownership interest (including any partnership interest) in a rental project; or
- (2) Is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

- (1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy shall equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 951.8(c)(3));
- (2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise; or
- (3) Homeownership set-aside funds.

Very low-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *very low-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income at or below 50 percent of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, very low-income household means a household which, upon initial occupancy of a rental unit, has an income at or below 50 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *very low-income household* means an occupying household with an income at or below 50 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

(3) *Family-size adjustment.* The income limit for *very low-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space. (The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998; 64 FR 24027, May 5, 1999; 65 FR 5419, Feb. 4, 2000; 65 FR 8263, Feb. 18, 2000; 65 FR 17437, Apr. 3, 2000; 67 FR 12852, Mar. 20, 2002; 67 FR 18804, Apr. 17, 2002]



homeless households under § 951.6(b)(4)(iv)(D).

2. Inclusion of FFIEC in Definition of "Median Income for the Area"—§ 951.1

Under the AHP regulation, households are eligible for AHP subsidies if they have an income at or below the targeted income level, expressed as a percentage of median income for the area, specified in the AHP application. See 12 CFR 951.5(b)(1), 951.6(b)(4)(iv)(C). Section 951.1 of the AHP regulation defines "median income for the area" generally as one or more of the following, as determined by the Bank:

a. The median income for the area, as published annually by the U.S. Department of Housing and Urban Development (HUD);

b. The applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program;

c. The median income for the area, as published by the U.S. Department of Agriculture; or

d. The median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity's housing programs, and approved by the Finance Board, at the request of a Bank, for use under the AHP. See 12 CFR 951.1.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Federal Financial Institutions Examination Council (FFIEC) is a Federal government source that publishes updated median income data for areas, based on existing HUD median income data. Since the FFIEC median income data is derived from existing HUD data, which is a permissible source of area median income data for determining the income eligibility of households under the AHP regulation, the Finance Board believes that the Banks should also be able to use such FFIEC data for determining household income eligibility. This change would be consistent with the Finance Board's recent amendment to the definition of "median income for the area" in its Community Investment Cash Advance (CICA) Programs Regulation to include FFIEC as a source of median income data that may be used to determine income eligibility for projects and households funded under CICA programs. See 66 FR 50293 (October 3, 2001) (*codified at* 12 CFR 952.3).

Therefore, under the proposed rule, new paragraphs (1)(ii) and (2)(ii) would be added to the existing definition of "median income for the area" in § 951.1 to include FFIEC as a data source, and

the remaining paragraphs would be renumbered accordingly. Commenters generally supported this proposed change.

Accordingly, the final rule adopts, without change, the proposed amendments to § 951.1 to include FFIEC as a source of median income data.

B. Permitting Banks to Allocate AHP Funds From the Subsequent Year's Required Annual AHP Contribution to the Current Year's Competitive Application Program—§ 951.3(a)(2)

The AHP regulation provides that in cases where the amount of AHP homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. See 12 CFR 951.3(a)(1). The AHP regulation does not allow the Banks to make a similar allocation of AHP funds from the subsequent year's required annual AHP contribution to the current year's AHP competitive application program. See 12 CFR 951.3(a)(2).¹

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have indicated that there may be special circumstances in which it would be beneficial to have the flexibility to allocate a portion of the subsequent year's required AHP contribution to fund additional applications in the current year under the competitive application program. Such special circumstances could include natural or man-made disasters or other emergencies, or sudden changes in market conditions or demand caused by significant economic changes, that increase the need for funds for affordable housing projects in the current year. Another circumstance might be a demand for additional AHP funds for use in conjunction with a special allocation of housing funds made by a Federal, state or local government agency in the current year.

Several Banks also have raised the issue that a change in generally accepted accounting principles in the United States, contained in Statement of Financial Accounting Standards (SFAS) 133, could cause fluctuations in a Bank's net earnings and thereby cause fluctuations in the Bank's required AHP

¹ Each Bank is required generally to contribute annually to its AHP 10 percent of its net earnings for the previous year. If the aggregate amount of such annual payments by all of the Banks is not at least \$100 million, each Bank must contribute to its AHP its *pro rata* share of \$100 million. See 12 U.S.C. 1430(j)(5).

contributions from year to year. Allowing the Banks to allocate AHP funds from the subsequent year's required AHP contribution to the current year under the competitive application program would give the Banks flexibility to mitigate some of these year-to-year fluctuations in required AHP contributions.

The Finance Board agrees that allowing allocation of AHP funds from the subsequent year's required AHP contribution to the current year's competitive application program could be beneficial to the AHP. The Finance Board recognizes that allowing such allocation of AHP funds may result in fewer AHP funds available for the subsequent year. However, the overall amount of AHP funds available would not decrease; a portion of the funds would simply be available in the current year rather than in the subsequent year. Moreover, there is no guarantee in any case that the amount of AHP funds available in a given year will be the same as the amount available in the previous year, given fluctuations in Bank net earnings from year to year.

Therefore, under the proposed amendment to § 951.3(a)(2), a Bank, in its discretion, could allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program. This authority would be separate from and in addition to a Bank's existing authority to allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs at such Bank. See 12 CFR 951.3(a)(1). As with the homeownership set-aside programs, a Consumer Price Index (CPI) adjustment provision would be included in the regulation for the maximum dollar limit under the competitive application program. Commenters generally supported these proposed changes.

Accordingly, the final rule adopts, without change, the proposed amendments to § 951.3(a)(2) to allow a Bank to allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program, as well as the CPI adjustment provision.

C. Removal of Requirement that Banks Offer Comparable Amounts of AHP Subsidies in Each Funding Period—§ 951.6(b)(1)

The AHP regulation provides that the amount of AHP subsidies offered by a Bank in each funding period under the

h. In paragraph (1)(ix) of the definition of *Targeted beneficiaries*, adding the words "other area that" between the words "or" and "qualifies";

i. In the definition of *Targeted income level*, amending the introductory text of paragraph (3) by removing the term "CICA"; and amending paragraph (4) by removing the words "CICA advances" and adding, in their place, the words "advances or grants";

j. Removing the definition of *UDA or Urban Development Advance*; and

k. In the definition of *UDA program or Urban Development Advance program*, removing the terms "UDA" and "Advance" and adding, in their place, the terms "UDF" and "Funding", respectively, and removing the words "a program" and adding, in their place, the words "an advance or grant program".

The additions and revisions read as follows:

§ 952.3 Definitions.

* * * * *

Median income for the area.

(1) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

* * * * *

(v) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

* * * * *

§ 952.5 [Amended]

6. Amend § 952.5 by:

a. In paragraph (a)(3), removing the terms "RDA" and "UDA" and adding, in their place, the terms "RDF" and "UDF", respectively;

b. In paragraph (c), removing the word "advances" and adding, in its place, the word "funding";

c. In the heading of paragraph (d), and in paragraphs (d)(2) and (d)(3), removing the term "CICA" wherever it appears; and

d. In paragraphs (d)(5) and (d)(6)(i), removing the words "CICA advances" wherever they appear and adding, in their place, the words "advances made under CICA programs".

§ 952.7 [Amended]

7. Amend § 952.7 by:

a. In paragraph (a), removing the words "by a CICA advance" and adding, in their place, the words "under a CICA program"; and

b. In paragraph (c), removing the word "lending" and adding, in its place, the word "funding".

Dated: September 26, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,
Chairman.

[FR Doc. 01-24587 Filed 10-2-01; 8:45 am]

BILLING CODE 6725-01-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2001-18]

RIN 3069-AB04

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The changes include: increasing the maximum amount of money that may be set aside annually, in the aggregate, under a Federal Home Loan Bank's (Bank) homeownership set-aside programs to the greater of \$3.0 million or 25 percent of the Bank's annual required AHP contribution; removing one of the criteria for use of homeownership set-aside funds to pay for counseling costs in order to equalize the criteria with that of the competitive AHP application program; permitting members drawn from community and not-for-profit organizations actively involved in providing or promoting community lending in a Bank's district to serve on the Bank's Advisory Council; making the AHP outlay adjustment requirements applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved; removing the requirement for annual project sponsor certifications on household income eligibility for owner-occupied projects; removing the requirements for project sponsor certifications to the member and member certifications to the Bank on tenant income and rent targeting

commitments and project habitability within the first year of completion of a rental project; and allowing projects modifications to be eligible for AHP funds that remain uncommitted or unused by the end of the year.

EFFECTIVE DATE: The final rule shall be effective on November 2, 2001.

FOR FURTHER INFORMATION CONTACT:

Charles E. McLean, Deputy Director, (202) 408-2537, Melissa L. Allen, Program Analyst, (202) 408-2524, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. See 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the AHP. See *id.* The Finance Board's existing regulation governing the operation of the AHP, which made comprehensive revisions to the AHP, was adopted in August 1997 and became effective January 1, 1998. See 62 FR 41812 (Aug. 4, 1997) (*now codified at 12 CFR part 951*).

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. Over the course of implementation of the AHP, the Banks and Finance Board staff have identified additional amendments that could improve the operation and effectiveness of the AHP. Accordingly, on May 10, 2001, the Finance Board published a proposed rule requesting comment on these proposed amendments to the AHP regulation. See 66 FR 23864 (May 10, 2001). The proposed rule provided for a 30-day comment period, which closed on June 11, 2001.

The Finance Board received 23 comment letters on the proposed rule. Commenters included: 5 Banks; 3 Bank Advisory Councils; 6 trade associations; and 9 nonprofit housing developers. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the proposed rule on



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P. O. Box 1010
Fernandina Beach, Florida 32035-1010

Nick Deonas
Ansley Acree
Vickie Samus
Floyd L. Vanzant
Marianne Marshall

Dist. No. 1 Fernandina Beach
Dist. No. 2 Fernandina Beach
Dist. No. 3 Yulee
Dist. No. 4 Hilliard
Dist. No. 5 Callahan

J. M. "Chip" OXLEY, JR.
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

MEMORANDUM

TO: JAY MARLLES, PLANNING DIRECTOR
FROM: MICHAEL S. MULLIN, COUNTY ATTORNEY
DATE: MAY 9, 2003
RE: LIBERTY DEVELOPMENT FLORIDA LLC

Dictated but not proof read by
Mr. Mullin. - Mailed in his
absence to avoid delay.

Jay, I received the attached letter from Wesley Poole. I
understand his concern. Please review the letter and advise.

I will prepare a letter if you concur.

MSM:jb

CC: Wesley Poole, Esquire

POOLE & POOLE, P.A.
Attorneys at Law
SUITE 200, ALLAN BUILDING
303 CENTRE STREET
FERNANDINA BEACH, FLORIDA 32034

WESLEY R. POOLE
H. PRICE POOLE, JR.
CAROL ANN FREEHAFFER
FRANCES G. BURGESS, C.L.A.

PLEASE REPLY TO:
POST OFFICE BOX 1280
FERNANDINA BEACH, FL 32035-1280
TELEPHONE 904. 261.0742
FACSIMILE 904. 261.0745

May 6, 2003

Michael S. Mullin, Esq.
Nassau County Attorney
Post Office Box 1010
Fernandina Beach, FL 32035-1010

Re: Liberty Development Florida LLC

Dear Mike:

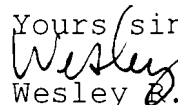
My client has expressed a concern that certain language in the Development Agreement could be subject to misinterpretation. That language is the last sentence in Section 3.1 d., which reads as follows:

"For purposes of this criteria, the term "affordable" is defined as: The monthly payments on a mortgage with a loan to sales price ratio of 95% and an amortization period of 360 months do not exceed 28% of the **family's** gross monthly income; or" (emphasis added)

The concern is that this could be interpreted to mean that the payments will not exceed 28% of a particular family's income. This would, obviously, be difficult, if not impossible, to verify. The intent is to require that the payments not exceed 28% of the maximum allowable percentage of the Area Median Income. This methodology is consistent with the Federal Home Loan Bank affordable housing criteria upon which this part of the agreement is based.

If you agree, I would appreciate your written acknowledgement of this interpretation; with such acknowledgement, I do not think an addendum to the Agreement would be required.

I would appreciate your thoughts.

Yours sincerely,

Wesley B. Poole

wespoole@bellsouth.net

wespoole@bellsouth.net

copy: client

POOLE & POOLE, P.A.
Attorneys at Law
SUITE 200, ALLAN BUILDING
303 CENTRE STREET
FERNANDINA BEACH, FLORIDA 32034

WESLEY R. POOLE
H. PRICE POOLE, JR.
CAROL ANN FREDHAFER
FRANCIS G. BURGESS, C.L.A.

PLEASE REPLY TO:
POST OFFICE BOX 1280
FERNANDINA BEACH, FL 32035-1280

TELEPHONE 904. 261.0742
FACSIMILE 904. 261.0743

May 6, 2003

Michael S. Mullin, Esq.
Nassau County Attorney
Post Office Box 1010
Fernandina Beach, FL 32035-1010

Re: Liberty Development Florida LLC

Dear Mike:

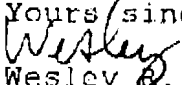
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The concern is that this could be interpreted to mean that the payments will not exceed 28% of a particular family's income. This would, obviously, be difficult, if not impossible, to verify. The intent is to require that the payments not exceed 28% of the maximum allowable percentage of the Area Median Income. This methodology is consistent with the Federal Home Loan Bank affordable housing criteria upon which this part of the agreement is based.

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I would appreciate your thoughts.

Yours sincerely,

Wesley R. Poole

wespoole@bellsouth.net

FROM: POOLE & POOLE, P.A.

FAX NO.: 19042610745

May, 06 2003 08:39AM P3

copy: client

wespoole@bellsouth.net

Poole & Poole, P.A.

Attorneys at Law
P. O. Box 1280
Fernandina Beach, FL 32035-1280

Phone # 904-261-0742
Fax # 904-261-0745

FAX COVER SHEET

Facsimile Number Transmitted to: 491-3618

Phone Number:

To: Mike Mullin, Esq.

Of:

From: Wesley R. Poole, Esquire

Client/Matter: Liberty Development

Date: May 6, 2003

DOCUMENTS	NUMBER OF PAGES*
Letter	2

COMMENTS:

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PREPARED BY AND RETURN TO:
Christopher J. McCranie, Esquire
Nelson Mullins Riley & Scarborough, LLP
50 N. Laura Street, Suite 2850
Jacksonville, Florida 32202

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
BETWEEN
WOODBRIER PROPERTY, LLC AND
NASSAU COUNTY**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT is dated May 11, 2015 (the "Second Amendment"), by and between WOODBRIER PROPERTY, LLC, a Florida limited liability company ("Woodbrier"), and the BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, a political subdivision of the State of Florida ("County").

Recitals:

A. Whereas, Liberty Development Florida, LLC, a dissolved Florida limited liability company ("Liberty"), and the County entered into that certain Development Agreement dated April 14, 2003 as recorded at Book 1133, Pages 17-23, as amended by that certain First Amendment to Development Agreement recorded at Book 1679, page 1307, all in the Official Records of Nassau County, Florida (as amended, the "Agreement"), which provided for the responsibilities of the parties as set forth therein as related to real property located in Nassau County, Florida (the "Property") described in such Agreement.

B. Whereas, Woodbrier is now the fee simple owner of a portion of the Property identified in the attached Exhibit A (the "Release Parcel") and is, therefore, the successor in interest to Liberty under the Agreement as related to the Release Parcel.

C. Whereas, the Release Parcel was not intended to be included as a portion of the Property under the Agreement and remains undeveloped.

D. Whereas, Woodbrier and the County desire to amend the Agreement as set forth herein to release and remove the Release Parcel from the obligations and liabilities of the Agreement, and Woodbrier and the County have agreed to enter into this Second Amendment in order to so remove and release the Release Parcel from the Agreement.

NOW, THEREFORE, FOR and IN CONSIDERATION of good and valuable mutual

consideration the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The recitals and representations set forth in the foregoing paragraphs are material to this Second Amendment and are hereby incorporated into and made a part of this Second Amendment as though they were fully set forth in this paragraph.

2. The County has determined, at two duly advertised public hearings, that the Release Parcel was not intended to be included in, or encumbered by, the Agreement, the Release Parcel remains undeveloped, and the Release Parcel should be released and removed from the Agreement and any obligations or liabilities related thereto.

3. The County hereby approves the release and removal of the Release Parcel from the Agreement and the description of the Property.

4. The description of the Property is hereby amended and modified to delete, remove and otherwise except the Release Parcel from the Property, and the Agreement shall have no further force or effect as related to the Release Parcel. The description of the Property in the Agreement shall otherwise remain unchanged except as expressly provided in this Second Amendment.

5. The Second Amendment shall be recorded within thirty (30) days of the joint execution of the Second Amendment. The recordation expense shall be a requirement of Woodbrier. Copies shall be provided to Nassau County and Woodbrier.

6. The development of all parcels subject to the Agreement as amended hereby shall proceed in accordance with the applicable regulations in effect at the time of development.

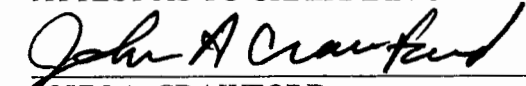
7. Time is of the essence.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



PAT EDWARDS
Its: Chairman

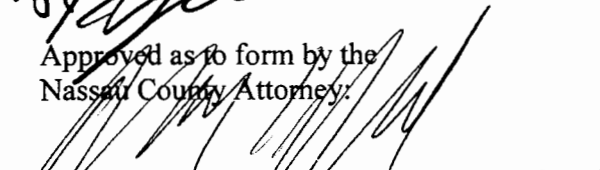
ATTEST AS TO CHAIRMAN'S SIGNATURE:



JOHN A. CRAWFORD
Its: Ex-Officio Clerk

MES
05-13-15

Approved as to form by the
Nassau County Attorney:

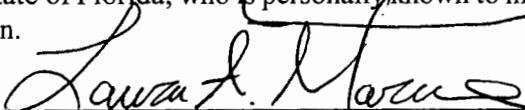


MICHAEL S. MULLIN

STATE OF FLORIDA)
COUNTY OF Nassau)

The foregoing instrument was acknowledged before me this 11th day of May, 2015 by Pat Edwards, as Chairman of the Board of County Commissioners, Nassau County, Florida, a political subdivision of the State of Florida, who is personally known to me or who has produced _____, as identification.

[SEAL]


Print Name: Laura A. Marcini
Notary Public, State of Florida
Commission No.: FF 200575
My Commission Expires: 02/17/2019

LAURAA. MARCIN
Notary Public, State of Florida
My Comm. Expires February 17, 2019
Commission No. FF 200575

Signed, Sealed and Delivered
in the Presence of:

WOODBRIER PROPERTY, LLC
a Florida limited liability company

[Signature]
Witness: JOHN W. NICHOLS

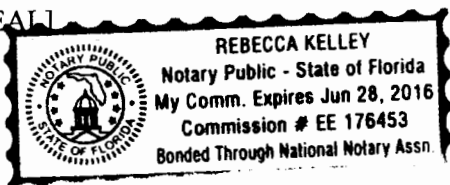
[Signature]
Name: Brent White
Title: Manager

[Signature]
Witness: Esther Nichols

STATE OF FLORIDA
COUNTY OF Clay

The foregoing instrument was acknowledged before me this 20 day of May, 2015 by Brent White, as manager of Woodbrier Property, LLC, a limited liability company, on behalf of the company, who is personally known to me or who has produced _____, as identification.

[SEAL]



[Signature]
Print Name: Rebecca Kelley
Notary Public, State of Florida
Commission No.: EE 176453
My Commission Expires: 6/28/16

EXHIBIT A

Release Parcel

A PORTION OF SECTION 40 (WILLIAM BERRIE GRANT) AND A PORTION OF SECTION 41 (D. FERNANDEZ GRANT), TOWNSHIP 2 NORTH, RANGE 28 EAST, NASSAU COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF SECTION 42 (A. TUCKER GRANT), TOWNSHIP 2 NORTH, RANGE 28 EAST, NASSAU COUNTY, FLORIDA; THENCE SOUTH 85 DEGREES 47 MINUTES 37 SECONDS EAST ALONG THE SOUTH LINE OF SAID SECTION 42 (A. TUCKER GRANT), A DISTANCE OF 607.85 FEET; THENCE NORTH 04 DEGREES 38 MINUTES 54 SECONDS WEST, A DISTANCE OF 3138.33 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED CONTINUE NORTH 04 DEGREES 38 MINUTES 54 SECONDS WEST, A DISTANCE OF 524.58 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF WOODBRIDGE PARKWAY (AN 80.00 FOOT RIGHT-OF-WAY); THENCE SOUTH 85 DEGREES 20 MINUTES 28 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 532.13 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEASTERLY, HAVING A RADIUS OF 540.00 FEET; THENCE IN A NORTHWESTERLY DIRECTION CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE PASSING THROUGH A CENTRAL ANGLE OF 55 DEGREES 30 MINUTES 06 SECONDS AN ARC DISTANCE OF 523.09 FEET TO WHERE SAID RIGHT-OF-WAY LINE INTERSECTS THE EASTERLY LINE OF NASSAU CLUB APARTMENTS; (THE AFORESAID ARC HAS A CHORD DISTANCE OF 502.88 FEET THAT BEARS NORTH 66 DEGREES 54 MINUTES 29 SECONDS WEST); THENCE SOUTH 04 DEGREES 38 MINUTES 51 SECONDS EAST ALONG THE EASTERLY LINE OF NASSAU CLUB APARTMENTS, A DISTANCE OF 758.55 FEET TO THE SOUTHEASTERLY CORNER OF SAID NASSAU CLUB APARTMENTS; THENCE NORTH 85 DEGREES 21 SECONDS 06 MINUTES EAST, A DISTANCE OF 977.22 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.48 ACRES MORE OR LESS.